IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1092 OF 1998
IN
S.C.SUIT NO.3196 OF 1997

Bapusaheb Ramchandra Wangde,)
Indian Inhabitant,)
Residing at Room No.13, 10, Atul Niwas,)
7th Lane, Khetwadi, Girgaum,)
Mumbai 400 004.)..Appellant

Versus

Nagappa Subbarao Naik)
since deceased through)
Vijayalaxmi Sadashiv Nayak,)
Age: 34 years, Occ.: -)
Residing at Building No.3,)
Room No.83, Vijay Nagar, Bandra (E),)
Mumbai 400 051.)...Respondent

Shri Girish S. Godbole with Shri Naik for the Appellant.

Shri P.B. Shah for the Respondent.

CORAM : ABHAY S. OKA, J.

DATE : MARCH 23, 2007.

JUDGMENT:

1. Heard learned Advocates appearing for the parties. The Appellant is the original Plaintiff and the Respondent is the original Defendant. The Appellant-Plaintiff has taken exception to Judgment and Order dated 15th September, 1998 passed by the learned Judge of the City Civil Court, Bombay by which the plaint was ordered to be returned for presentation

in proper Court after payment of proper court fees.

2. The Appellant filed a suit against the Respondent inter alia for declaration that the Respondent has no right, title or interest in the suit shop which is more particularly described in the plaint. The Appellant also prayed for a decree of possession in respect of the suit shop and for other reliefs. Issues were framed on 06th January, 1998 and the impugned order was passed at a stage when examination-in-chief of the Appellant-Plaintiff was recorded. The learned trial Judge held that the suit was not properly valued for court fees and jurisdiction and if the suit was valued properly, the City Civil Court will not have pecuniary jurisdiction to entertain and try the suit.

3. The learned Advocate for the Appellant placed reliance on a decision of the learned single Judge of this Court in the case of **Kusumkant Nagda Vs. Mariam Bi wd/o Ebrahim (2005 Bombay Rent Cases Page 180)** and a decision of a Division Bench of this Court in the case **of Jagdish Hari Thatte Vs. The Municipal Corporation of Greater Bombay and Anr. (2007(1) ALL MR Page 513).** The submission made by the Advocate for

the Appellant is that the issue of jurisdiction was never framed as a preliminary issue and once all issues were framed and recording of evidence was commenced, it was not permissible for the trial Court to return the plaint without deciding all the issues framed on merits. He submitted that the approach of the learned Judge was contrary to law laid down by this Court in the aforesaid decisions. The learned Advocate for the Respondent supported the impugned order by a pointing out that before passing the impugned order, by a separate order passed on 30th July, 1998 the learned trial Judge had called upon the Appellant-Plaintiff to value the suit properly and to pay requisite court fees. He submitted that on plain reading of the plaint, the City Civil Court does not have pecuniary jurisdiction to entertain and try the suit and hence, no interference is needed.

4. I have considered the submissions. There is no dispute between the parties that issues were framed on 06th January, 1998. The first issue was regarding valuation of the suit and the second was regarding the pecuniary jurisdiction of the trial Court to entertain and try the suit. It is also not in dispute between the parties that none of the issues was ordered to be

heard as a preliminary issue and infact before passing the order impugned, the learned trial Judge had proceeded to record the oral evidence of the Appellant. It will be necessary to refer to the decision of the learned single Judge in the case of Kusumkant Nagda (supra). In paragraph No.9 of the said decision, the learned single Judge held thus:

> "9. Even under Order 14 Rule 2 of the Code of Civil Procedure, the trial Court could have considered the question of jurisdiction as preliminary issue although all other issues have been framed only if it had found it related to the issue of law only. In such circumstances, all other issues are to be settled later, after the issue of jurisdiction is determined. In the present case, the trial Court has not adopted even this procedure as laid down under Order 14 Rule 2 and instead the trial Court has framed all issues including the issues relating to the merits of the case. The parties have been permitted to lead evidence in regard to all issues. It is only at the stage of writing the order that

> the trial Court has confined its decision to only first issue, that of jurisdiction. In my view, it is clearly an erroneous procedure adopted by the Court. The trial Court ought to have decided all issues since evidence had been led on all issues which had been framed together. **The stage of deciding the preliminary issue under section 9A had long gone by and it was, therefore, erroneous on the part of the trial Court to return the plaint without deciding the other issues framed by it"**.(Emphasis supplied)

5. Another learned single Judge of this Court was of the view that the view taken in the case of Kusumkant Nagda (supra) requires reconsideration and therefore, a reference was made to the larger bench. The reference has been answered by the larger bench in the aforesaid decision in the case of Jagdish Hari Thatte (supra). While answering the reference, in paragraph No.11 of the decision, the Division Bench has held thus:

> "11. While answering the issue in question, one has to bear in mind the object

with which that Rule 2(1) has been substituted by the Code of Civil Procedure (Amendment) Act, 1976 w.e.f 1.2.1977. It is substituted to provide that, although a suit can be disposed of on preliminary issue, the court shall ordinarily pronounce judgment on all issues. This is obviously in order to avoid piecemeal trial and protraction of litigation. It may happen that in a given case issue with regard to jurisdiction of the court or bar to the suit created by any law for the time being in force may not be tried as preliminary issue and allowed to be tried alongwith other issues, and after parties adducing evidence fully, at the final stage the trial court may come to the conclusion that if lacks jurisdiction and as such may dismiss the suit on that ground or direct to return the plaint to the plaintiff for presentation to the proper court. In such a case, if the said order is challenged in the appellate court, and the appellate court comes to the conclusion that the finding recorded by the trial judge with regard to jurisdiction or tenability of the

suit is not correct then the appellate court would necessarily be required to remand the matter if no findings on other issues are recorded by the trial judge. Naturally, then in that event there would be protraction of litigation. So, considering this aspect and to avoid to undergo gamut of litigation again, amendment has been introduced, whereby, it is made clear that notwithstanding that a case may be disposed of on a preliminary issue the court shall subject to the provisions of sub-rule 2 pronounce judgment on all issues. So, this is infact that mandate laid down by the amended provision. If we carefully consider the provisions of Order XIV, rule 2(2)(1) and (2) together, then, it is absolutely clear that once the course contemplated under sub-rule (2) of rule 2 of Order XIV of the said code is not followed by the court then the court must necessarily follow the other course which says that the court shall record the findings on all the issues. **If, even after not adopting the course contemplated under sub-rule (2) of rule 2 of**

> **Order XIV, court is allowed to dispose of the matter merely on one issue of jurisdiction or maintainability, even after full trial of the suit, then it would amount to allowing the court to proceed against the letter and spirit of the amended mandatory provision of Order XIV, Rule 2(1).** So, once the parties and the court have chosen not to try the issue with regard to jurisdiction or maintainability of the suit as a preliminary issue and on the contrary evidence is led on all the issues and the matter is fixed for final order or judgment then it is necessary for the court of record findings on all the issues".(Emphasis supplied)

6. After making the aforesaid observations, the Division Bench proceeded to hold that the view taken by the learned single Judge in the case of Kusumkant Nagda (supra) is correct. As pointed out earlier the learned single Judge held that once the stage of deciding a preliminary issue under section 9A had long back gone by it was erroneous on the part of the trial Court to have returned the plaint without deciding the other issues framed by it.

7. In the present case there is no order made even under Rule 2 of Order XIV of the Code of Civil Procedure, 1908 for trying the issue of valuation and jurisdiction as a preliminary issue. After the commencement of recording of evidence, in view of the law laid down by this Court it was necessary for the trial Court to proceed with the recording of evidence and to decide all the issues framed in the suit. This is so because there was no order passed by the learned trial Judge for treating any particular issue as a preliminary issue. The learned Advocate for the Respondent fairly pointed out the decision of the learned single Judge of this Court in the case of **Varden T. James Vs. Farhang Azhar (2005 (Supp.) Bombay Cases Reporter Page 370)** wherein the learned single Judge has observed that it may be necessary to allow parties to lead evidence before issue of pecuniary jurisdiction regarding valuation of suit is answered.

8. It is true that before passing the impugned order the learned trial Judge has passed an order dated 30th July, 1998 calling upon the Appellant-Plaintiff to correct valuation and to pay

proper court fees. However, considering what is discussed above, at that stage, there could not have been any adjudication on the issue regarding valuation of the suit for jurisdiction and court fees.

9. The net result of the aforesaid discussion is that the orders dated 30th July, 1998 and 15th September, 1998 will have to be quashed and set aside not on the ground that the view taken therein is incorrect but only on the ground that at the stage at which the said orders were passed, the learned trial Judge could not have passed the said orders. The learned trial Judge is required to decide the first and second issues alongwith all other issues framed in the suit.

10. Hence, I pass the following order

(i) The impugned orders dated 30th July, 1998 and 15th September, 1998 are quashed and set aside. It is made clear that the issue regarding valuation of the suit for jurisdiction and court fees and consequently the issue regarding pecuniary jurisdiction are expressly kept open.

(ii) The learned trial Judge will now proceed with the recording of evidence and after completing the recording of evidence, the learned trial Judge will decide all the issues together.

(iii) Considering the fact that the suit is of the year 1997, the trial Court will dispose of the suit as expeditiously as possible and preferably on or before 30th April, 2008.

(iv) The parties are directed to appear before the trial Court on 04th June, 2007 for fixing the schedule of hearing.

JUDGE